

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

ABDUR RAHIYM-AMIR,

Plaintiff,

v.

**1:04-CV-121
(FJS/RFT)**

**INTERNATIONAL HOUSE OF PANCAKES, INC.;
MICHAEL SMITH; MELISSA SMITH; and
BELLAMY OF CORINTH, INC.,**

Defendants.

APPEARANCES

OF COUNSEL

THE DELORENZO LAW FIRM, LLP

THOMAS E. DELORENZO, ESQ.

201 Nott Terrace
Schenectady, New York 12307
Attorneys for Plaintiff

MICHAEL SMITH

Rensselaer, New York 12144
Defendant *pro se*

MELISSA SMITH

Rensselaer, New York 12144
Defendant *pro se*

SCULLIN, Senior Judge

ORDER

On June 1, 2006, Magistrate Judge Treece issued a Report-Recommendation and Order, in which he granted Plaintiff's motion for sanctions, terminated David W. Novak, Esq. as appointed counsel for Defendants Michael Smith and Melissa Smith and recommended that this Court order the Clerk of the Court to strike Defendants Michael Smith's and Melissa Smith's answer and declare these Defendants in default. *See* Report-Recommendation and Order dated

June 1, 2006, at 3. In addition, because he wanted to insure that these Defendants received a copy of his Report-Recommendation and Order, Magistrate Judge Treece ordered "the Clerk of the Court to serve a copy of this Report-Recommendation and Order, by regular mail, upon the parties to this action, including Mr. Novak, as well as Michael And [sic] Melissa [Smith], . . . [at] their last known address." *See id.* Defendants Michael Smith and Melissa Smith did not file any objections to Magistrate Judge Treece's June 1, 2006 Report-Recommendation and Order within the required time frame.

Accordingly, after reviewing the entire file in this case, the Court hereby

ORDERS that Magistrate Judge Treece's June 1, 2006 Report-Recommendation and Order is **ADOPTED IN ITS ENTIRETY** for the reasons stated therein; and the Court further

ORDERS that the Clerk of the Court shall strike Defendant Michael Smith's and Defendant Melissa Smith's answer from the docket in this case; and the Court further

ORDERS that the Clerk of the Court shall enter a default judgment against these Defendants on the issue of liability; and the Court further

ORDERS that Plaintiff shall file papers with the Court and serve a copy of the same on Defendant Michael Smith and Defendant Melissa Smith at their last known address, by certified mail, return receipt requested, in support of his request for damages, including the basis for his calculation of damages and any supporting documentation required to assess such damages, no later than **December 18, 2006**; and the Court further

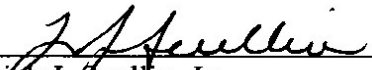
ORDERS that the Clerk of the Court shall serve a copy of this Order, by certified mail, return receipt requested, upon Defendant Michael Smith and Defendant Melissa Smith at their last known address; and the Court further

ORDERS that Defendants Michael Smith and Melissa Smith shall file with the Court and serve upon Plaintiff's counsel their papers in opposition to Plaintiff's request for damages no later than **January 22, 2007**; and the Court further

ORDERS that Plaintiff's request for damages shall be determined based upon the parties' papers unless the Court determines that a hearing is necessary and informs the parties accordingly.

IT IS SO ORDERED.

Dated: November 15, 2006
Syracuse, New York



Frederick J. Scullin, Jr.
Senior United States District Court Judge